

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER A PROPOSED REGULATION FOR STATE IMPLEMENTATION PLAN CREDIT FROM MOBILE AGRICULTURAL EQUIPMENT

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider a proposed adoption of a regulation for *State Implementation Plan Credit from Mobile Agricultural Equipment*.

DATE: October 24, 2013

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

RECEIVED FOR FILING PUBLICATION DATE

AUG 27 '13 SEP 06 '13

Office of Administrative Law

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., Thursday, October 24, 2013, and may continue at 8:30 a.m., on Friday, October 25, 2013. This item may not be considered until October 25, 2013. Please consult the agenda for the hearing, which will be available at least 10 days before October 24, 2013, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of California Code of Regulations, title 13, section 2428.

Documents Incorporated by Reference: "2011 Carl Moyer Program Guidelines" (approved April 28, 2011); "2008 Carl Moyer Program Guidelines" (approved March 27, 2008); and "2005 Carl Moyer Program Guidelines" (approved November 17, 2005)

Background and Effect of the Proposed Rulemaking:

In 2007, the San Joaquin Valley Air Pollution Control District (SJVAPCD) developed a State Implementation Plan (SIP) to meet the 0.08 parts per million (ppm) 8-hour ozone standard by 2023. The 2007 SIP, which was approved by the United States Environmental Protection Agency (U.S. EPA) in December 2011, contains a measure by ARB to propose a regulation for mobile agricultural equipment in the San Joaquin Valley, which is comprised of the counties within the SJVAPCD, including San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings Counties, as well as the western portion of Kern County. Specifically, the approved 2007 SIP includes a goal to achieve

emissions reductions of 5 to 10 tons per day of oxides of nitrogen (NO_x) in the San Joaquin Valley by 2017 in order to accelerate air quality progress.

ARB incentive-based air quality programs are designed to achieve near- and long-term emission reductions through investments in cleaner technologies. These programs include the Carl Moyer Program, Assembly Bill 118 Air Quality Improvement Program (AQIP), and Proposition 1B (Goods Movement and Lower-Emission School Bus Programs). Each of these programs addresses specific air quality priorities, such as the early replacement of older vehicles and engines with newer, cleaner engines and the development and deployment of advanced technology vehicles and equipment. The success of these programs helps California accelerate progress toward achieving health-based air quality standards, prevents federal sanctions such as the loss of federal highway funds, and assists businesses with equipment upgrades prior to regulatory requirements (with cost-sharing to leverage private funding for all projects).

In particular, since 1998 ARB's Carl Moyer Program has funded the extra capital cost of cleaner-than-required vehicles and equipment to help achieve air pollution reductions that are both early and surplus to regulations. Funds for the Carl Moyer Program include tire replacement and vehicle registration (smog abatement) fees. The Carl Moyer Program provides incentives to private and public agencies to voluntarily clean up older, dirtier vehicles and mobile off-road engines through retrofit or replacement. ARB develops statewide implementation guidelines, distributes funds to air districts, and conducts periodic oversight. Air districts choose which project types to fund from a variety of eligible categories, including on-road and off-road vehicles and equipment, marine, shore power, locomotives, stationary agriculture pumps, emergency equipment, lawn and garden equipment, and light duty vehicle scrap. Funded projects must achieve early or extra emission reductions not otherwise required by law or regulation. SJVAPCD (like other large and medium-sized air districts) contributes match funds as required by the Carl Moyer Program.

SJVAPCD has partnered with ARB from the beginning of the Carl Moyer Program, and has used the Carl Moyer Program as a model for other local funded programs. As demonstrated through multiple reviews and audits, SJVAPCD's incentive programs are highly efficient and effective. SJVAPCD's voluntary incentive programs fund cleaner-than-required engines and equipment and are a crucial component of the SJVAPCD's efforts to reduce emissions and meet air quality standards. Since the adoption of the 2007 SIP, the agricultural industry has worked collaboratively with the SJVAPCD and the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) to procure and expend federal, state and local funds to reduce pollution by accelerating the turnover of older, dirtier mobile agricultural equipment with the cleanest available technologies, which for mobile agricultural equipment is primarily comprised of Tier 3 and cleaner off-road engines. U.S. EPA has provided guidance on incorporating voluntary measures, such as these incentive programs, into SIPs. To meet U.S. EPA criteria for SIP creditability of incentive funded projects, the emission reductions must be surplus, quantifiable, enforceable, and permanent.

In 2010, SJVAPCD, ARB, NRCS, and U.S. EPA signed a Statement of Principles to work collaboratively to develop a mechanism to provide SIP credit for investments made in the San Joaquin Valley by the agriculture industry to clean up mobile agricultural equipment through local, state, and federally funded incentive programs. This regulatory action is the outcome of this Statement of Principles.

Arising from the Statement of Principles, SJVAPCD developed *Rule 9610 State Implementation Plan for Emission Reductions Generated Through Incentive Programs* (Rule 9610) that was approved by their Governing Board on June 20, 2013. Rule 9610 provides administrative requirements for local, state, and federal voluntary incentive programs in the San Joaquin Valley to ensure that emission reductions will be eligible to receive SIP credit.

The Proposed Regulation for *State Implementation Plan Credit from Mobile Agricultural Equipment* would complement Rule 9610 by providing an administrative mechanism to ensure that incentive-funded mobile agricultural equipment projects implemented using the Carl Moyer Program Guidelines and administered by SJVAPCD result in emission reductions that are eligible to receive SIP credit.

Overall, both the ARB regulation and Rule 9610 combined would ensure that all SIP creditable emission reductions from incentive-funded mobile agricultural equipment projects (regardless of funding source) are coordinated and accounted for. This proposed regulation would also provide for an opt-in for any other air district in California that complies with the requirements of the proposed regulation; the opt-in district's local rule must have mobile agricultural equipment emission reductions resulting from incentive programs that follow the Carl Moyer Program Guidelines to be eligible to be considered for SIP credit.

Description of the Proposed Regulatory Action, Objective, and Benefits:

Proposed Regulatory Action:

To be eligible for SIP credit, ARB's proposed regulation requires that mobile agricultural equipment incentive projects follow the Carl Moyer Program Guidelines. To ensure accountability, ongoing program reviews and audits by the air district will be required to verify project data, application information, emission reductions, destruction verification, and retention of application, inspection, destruction, and other project-related documentation consistent with the Carl Moyer Program Guidelines.

Carl Moyer Program emission reductions are surplus, quantifiable, enforceable, and permanent, and are consistent with U.S. EPA guidance for SIP creditability of incentive funded projects. This proposed regulation would also allow an opt-in for any other air district in California that complies with the requirements of the proposed regulation to have mobile agricultural equipment emission reductions that result from incentive programs that follow the Carl Moyer Program Guidelines be eligible to be considered for SIP credit.

Objective: Administrative Mechanism for State Implementation Plan Credit for Incentive Plans Following Carl Moyer Program Guidelines:

This proposed rulemaking provides an administrative mechanism to ensure emission reductions from voluntary incentive programs implemented following the Carl Moyer Program Guidelines are eligible for SIP credit and can be used towards meeting a SIP commitment. The proposed regulation is intended to complement SJVAPCD's Rule 9610, which provides administrative requirements on local, state, and federal voluntary incentive programs in the San Joaquin Valley to ensure that emission reductions will be eligible to receive SIP credit.

Benefits:

The proposed regulation ensures that ARB will meet the 2007 SIP commitment to bring to the Board a measure for mobile agricultural equipment in the San Joaquin Valley. Staff estimates that the emission reductions that will be eligible for SIP credit as a result of the proposed regulation will meet the 2007 SIP goal for NOx emission reductions of 5 to 10 tons per day by 2017 to accelerate clean air progress.

DETERMINATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulatory action, ARB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations.

STATE IMPLEMENTATION PLAN REVISION

If adopted, ARB plans to submit the proposed regulatory action to U.S. EPA for approval as a revision to the California SIP required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it adopts regulations intended to reduce emissions of air pollutants in order to attain and maintain National Ambient Air Quality Standards promulgated by U.S. EPA pursuant to the CAA.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Regulation for State Implementation Plan Credit from Mobile Agricultural Equipment.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be

accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on Wednesday, October 9, 2013.

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Agency Contact Persons

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Lynsay Carmichael, Resources Engineer, at (916) 322-0407 or Mr. Tim Hartigan, Air Pollution Specialist, at (916) 324-0202.

Further, the agency representative, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed to Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2013/sipmobileag2013/sipmobileag2013.htm>

DISCLOSURES REGARDING THE PROPOSED REGULATION

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Fiscal Impact / Local Mandate

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would create no administrative costs to ARB, SJVAPCD, or other opt-in air districts by implementing the regulation. The expenses represent no additional workload to current administrative activities and therefore are covered through normal administration budgets. The proposed regulatory action would not create costs or savings to any other State agency, or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to State or local agencies.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Cost Impacts on Representative Private Persons or Businesses

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of The Economic Impact Analysis/Assessment Prepared Pursuant to Government Code Sec. 11346.3(b)

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

Benefits of the Proposed Regulation:

The objective of the proposed regulation is to provide an administrative mechanism to ensure emission reductions from mobile agricultural equipment voluntary incentive programs implemented by SJVAPCD following the Carl Moyer Program Guidelines are eligible for SIP credit and can help meet the 2007 SIP goal of reducing NOx emissions in the San Joaquin Valley by 5 to 10 tons per day by 2017 to accelerate air quality progress. Other California air districts that opt-in per the requirements of the proposed regulation would also be eligible for SIP credit for mobile agricultural equipment voluntary incentive programs that follow the Carl Moyer Program Guidelines.

Effect on Small Business

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the regulated party, SJVAPCD or Districts that opt-in, does not fall under the category of "small business."

Housing Costs

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Alternatives

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Staff considered two alternatives to the proposed regulation. One alternative considered was "No Regulation", that is, refrain from establishing a mechanism for mobile agricultural equipment voluntary incentive programs and projects to demonstrate emission reductions that can be eligible to receive SIP credit. The second alternative considered was a "Require Turnover to New Technology" alternative that requires the mobile agricultural fleet in the San Joaquin Valley to turn over to the cleanest technology by a set compliance schedule. A more detailed analysis of the alternatives considered for the regulation can be found in *ISOR Chapter VI, Economic Impacts*.

Environmental Analysis

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code section 21080.5, ARB has conducted an analysis of the potential for significant adverse and beneficial environmental impacts associated with the proposed regulatory action. The environmental analysis of the proposed regulatory action can be found in *ISOR Chapter IV, Environmental Impacts Analysis*.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the meeting and may provide comments by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on **Monday, September 9, 2013**. To be considered by the Board, written comments not physically submitted at the meeting, must be submitted on or after **Monday, September 9, 2013** and received **no later than 12:00 noon on Wednesday, October 23, 2013**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

You can sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to:
<http://www.arb.ca.gov/board/online-signup.htm>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39001, 39003, 39500, 39515, 39516, 39600, 39601, 39602, 39602.5, 39659, 43000, 43000.5, and 44291. This action is proposed to implement, interpret, and make specific sections 39002, 39515, 39516, 39600, 39601, 39602, 39602.5, 39650, 39656, 39657, 39658, 39659, 43000, 43000.5, and 43018.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing.

TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alterno u otro idioma
- Una acomodación razonable relacionados con una incapacidad

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California..

CALIFORNIA AIR RESOURCES BOARD


Richard W. Corey
Executive Officer

Date: August 27, 2013

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.